

Senate Bill No. 140

Passed the Senate September 4, 2001

Secretary of the Senate

Passed the Assembly August 30, 2001

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2001, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 2330 and 2620.2 of, to repeal Section 2629 of, and to add Sections 2320.1 and 2320.2 to, the Probate Code, relating to guardianship and conservatorship.

LEGISLATIVE COUNSEL'S DIGEST

SB 140, Bowen. Guardians and conservators.

Existing law requires that every person appointed as a guardian or conservator shall give a bond of a specified amount that is approved by a court before letters of guardianship and conservatorship are issued, except as specified. Existing law also provides that the guardian or conservator may be required to furnish an additional bond upon the sale of real property or the borrowing of money secured by the real property of the estate.

This bill would provide that when the guardian or conservator has knowledge of facts from which he or she knows or should know that the bond posted is less than the required amount, he or she must apply for an order increasing the bond to the required amount. The bill would create an exception to the provision requiring the guardian or conservator to furnish an additional bond upon the sale of real property or the borrowing of money secured by the real property of the estate if the court makes a specified finding. The bill would also require that if a bond or an additional bond is required, the bond be posted before a court order confirming the sale or borrowing of money is effective and may be filed. The bill would also provide that if an additional bond is required by the court when the account is heard, the order approving the account and related matters would not be effective and the court would be prohibited from filing the order until the additional bond is filed.

Existing law requires a conservator or guardian to present an account of the estate of the conservatee or ward to a court for settlement and allowance within a specified time period, as specified.

This bill would provide that, when a conservator or guardian does not file an account and set the account for hearing within a specified time period, a court would be required to do one or more of the following: (1) punish or remove the conservator or guardian,



as specified; (2) order that money or personal property in the estate be deposited into an account to be subject to withdrawal only upon authorization of the court; (3) suspend the powers of the conservator or guardian and appoint a temporary conservator or guardian; (4) appoint legal counsel to represent the ward or conservatee, who shall be ordered to perform one or more specified activities; (5) grant an extension of time not to exceed 60 days, as specified, in which to file the account. The bill would also make a related change.

The people of the State of California do enact as follows:

SECTION 1. Section 2320.1 is added to the Probate Code, to read:

2320.1. When the conservator or guardian has knowledge of facts from which the guardian or conservator knows or should know that the bond posted is less than the amount required under Section 2320, the conservator or guardian, and the attorney, if any, shall make an ex parte application for an order increasing the bond to the amount required under Section 2320.

SEC. 2. Section 2320.2 is added to the Probate Code, to read:

2320.2. If additional bond is required by the court when the account is heard, the order approving the account and related matters, including fees, is not effective and the court shall not file the order until the additional bond is filed.

SEC. 3. Section 2330 of the Probate Code is amended to read:

2330. Upon the confirmation of the sale of any real property of the estate, or upon the authorization of the borrowing of money secured by a mortgage or deed of trust on real property of the estate, the guardian or conservator shall furnish an additional bond as is required by the court in order to make the sum of the bonds furnished by the guardian or conservator equal to the amount determined pursuant to Section 2320, taking into account the proceeds of the sale or mortgage or deed of trust, unless the court makes an express finding stating the reason why the bond should not be increased. If a bond or additional bond is required under this section, the order confirming the sale of real property of the estate or authorizing the borrowing of money secured by a mortgage or deed of trust on real property of the estate is not effective and the court shall not file the order until the additional bond is filed.



SEC. 4. Section 2620.2 of the Probate Code is amended to read:

2620.2. (a) Whenever the conservator or guardian has failed to file an account as required by Section 2620, the court shall require that written notice be given to the conservator or guardian and the attorney of record for the conservatorship or guardianship directing the conservator or guardian to file an account and to set the account for hearing before the court within 60 days of the date of the notice or, if the conservator or guardian is a public agency, within 120 days of the date of the notice.

(b) Failure to file the account within the time specified in the notice and any additional time allowed by the court under subdivision (a), or within 45 days of actual receipt of the notice, whichever is later, shall constitute a contempt of the authority of the court as described in Section 1209 of the Code of Civil Procedure.

(c) If the conservator or guardian does not file an account and set the account for hearing as required by Section 2620 the court shall do one or more of the following:

(1) Remove the conservator or guardian as provided under Article 1 (commencing with Section 2650) of Chapter 9 of Part 4 of Division 4.

(2) Issue and serve a citation requiring a guardian or conservator who does not file a required account to appear and show cause why the guardian or conservator should not be punished for contempt. If the guardian or conservator purposely evades personal service of the citation, the guardian or conservator shall be removed from office.

(3) Suspend the powers of the conservator or guardian and appoint a temporary conservator or guardian, who shall take possession of the assets of the conservatorship or guardianship, investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interest of the ward or conservatee. Compensation for the temporary conservator or guardian, and counsel for the temporary conservator or guardian, shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of condition of the bond, unless for good cause shown the court finds that the temporary conservator or guardian, and counsel for the temporary conservator or guardian, shall be compensated from the estate.



(4) (A) Appoint legal counsel to represent the ward or conservatee if the court has not suspended the powers of the conservator or guardian and appoint a temporary conservator or guardian pursuant to paragraph (2). Compensation for the counsel appointed for the ward or conservatee shall be treated as a surcharge against the conservator, and if unpaid shall be considered a breach of a condition on the bond, unless for good cause shown the court finds that counsel for the ward or conservatee shall be compensated according to Section 1470. The court shall order the legal counsel to do one or more of the following:

(i) Investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interest of the ward or conservatee.

(ii) Recommend to the court whether the conservator or guardian should be removed.

(iii) Recommend to the court whether money or other property in the estate should be deposited pursuant to Section 2453, 2453.5, 2454, or 2455 to be subject to withdrawal only upon authorization of the court.

(B) After resolution of the matters for which legal counsel was appointed in subparagraph (A), the court shall terminate the appointment of legal counsel, unless the court determines that continued representation of the ward or conservatee and the estate is necessary and reasonable.

(5) Order that money or property in the estate be deposited pursuant to Section 2453, 2453.5, 2454, or 2455 to be subject to withdrawal only upon authorization of the court.

(6) Grant, upon ex parte application or such notice as the court may require, time to file the account, not to exceed an additional 60 days after the expiration of the deadline described in subdivision (a), where the court finds there is good cause and that the estate is adequately bonded. After expiration of any extensions, if the account has not been filed, the court shall take action as described in paragraphs (1) to (5), inclusive.

(d) Subdivision (c) does not preclude the court from additionally taking any other appropriate action in response to a failure to file a proper accounting in a timely manner.

SEC. 5. Section 2629 of the Probate Code is repealed.



Approved _____, 2001

Governor

